IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.22104 OF 2006

1.Tamil Nadu Public works Department
Employees Welfare Association,
rep. by its Joint Secretary,
Register No.1554/MDS Chepauk,
Affiliated to N.G.O. Union,
Chennai-600 005.

2.K.Loganathan
3.K.Murugan
4.R.Banumathi
5.M.Selvam
6.B.Gopikumar
7.S.Rajendran
8.K.Venkatesan
9.G.Riyas Basha
10.K.Alis Mary
(Petitioners 2 to 10 are impleaded
vide order dt.9.2.2007 in
MP Nos.2 and 3 of 2006) .. Petitioners

Vs.

1.State of Tamil Nadu,
represented by its Secretary
Department of Public Works,
Fort St. George,
Chennai-600 009.

2.The Engineer in Chief,
and Chief Engineer (General),
Chepauk,
Chennai-600 005.

3.The Chief Engineer (Buildings),
Public works Department,
Chepauk,
Chennai-600 005.

4.The Superintending Engineer
(Building Maintenance Circle),
Public Works Department,
Chepauk,
Chennai-600 005.

5.The Executive Engineer,
North Presidency Division,
Chepauk, Chennai-600 005.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

6.The Assistant Executive Engineer,
Secretariat Sub-Division,
Public works Department,
Secretariat,
Chennai-600 009. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, directing the respondents herein to engage the members of petitioner Association in the NMR Roll and further to regularise the service of the said employees who fulfil the qualification as per norms with all service benefits rendered earlier including the service rendered under so-called contract and grant consequential relief.

For Petitioner : Mr.V.Prakash, SC
for Mr.S.S.Vasudevan

For Respondents: Mr.S.Gopinathan, AGP

ORDER

Seeking writ of mandamus to direct the respondents to engage the members of petitioner Association in the NMR Roll and further to regularise the service of the said employees, the petitioners have brought forth this writ petition before this court.

2.The affidavit filed in support of the petition is perused. The court heard the learned counsel for the petitioners.

3.The case of the petitioners is that the members of the petitioner Association have been working continuously for more than 15 years in the P.W.D. (Building Maintenance) and they are engaged in all types of work, such as regular maintenance and repair in the Secretariat building, etc. The Association placed a representation for regularisation of their members' service, but it was never considered. Since the members of the Association have rendered more than 10 years of continuous work, which was the qualifying service for regularisation and their legitimate claim for regularisation was denied by the respondents till this time, the T.N.P.W.D. Employees Association, Chennai filed O.A.No.7453 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai, seeking for injunction restraining the respondents from recruiting fresh NMRs and also to direct the respondents to finalise the norms and cadre strength as per G.O.Ms.No.355. The stay was granted by the Tribunal. Thereafter, the Tribunal has stated that the interim injunction would not apply insofar as the residence of VIPs regarding the NMRs already engaged as per the roll maintained.

4.The further case of the petitioners is that till January, 2001, the members of the Association were being engaged through contract for nearly about five years with the meagre wages. The respondents have stated that the reason for such engagement is that the employees working under the South division were all maintaining the office of the Ministers and the quarters of the Judges. Those buildings are covered under VIP places and the employees of the south division are engaged as NMRs and that discrimination was maintained by the respondents while treating the employees of South Division in comparison with the North Division and Marina Division. The Engineer in Chief, the second respondent has issued a letter, dated 8.4.2004

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

to the Chief Engineer (Buildings), the third respondent herein, stating to consider the representation of the members of the petitioner association in engaging their members in the NMR Roll and advised to engage the employees, who were working for a long period in the NMR Roll, but so far, the claim has not been considered. The second respondent again issued a circular, dated 11.08.2004, by which he instructed all other Chief Engineers to engage the employees, who rendered long years of service in the P.W.D. But, that circular was contrary to the direction issued by the Tribunal.

5.The further case of the petitioners is that the Executive Engineer, P.W.D. issued a letter to the Chief Engineer, dated 31.3.2006 that the members of the petitioner Association have been rendering service under the Chief Minister Special branch and further requested the Chief Engineer to consider the representation for regularisation and claims and further requested to issue an appropriate Government Order relating to the issue. Pursuant to the same, the Chief Engineer issued a circular, dated 12.4.2006 instructing all the Superintending Engineers (Building), to consider the employees, who were rendered 10 years of service for regularisation. But, the circulars have not been considered by the authorities. Despite the orders of the Tribunal, the respondents herein are engaging the members of the petitioner Association through contract basis, which was unjust and illegal. The members of the petitioner Association are receiving meagre wages of Rs.2000/- per month, inspite of rendering more than 15 years of service. With the low wages, the members of the petitioner Association's family were suffering to eke out their livelihood. The so-called contract under which the members of the petitioner Association were now being engaged was nothing, but a farce and not genuine, since the so-called contract was signed by the department heads and not through any genuine method of calling for tender, etc. Further, the very same persons are being employed which would only show that the said contract being entered into for the engagement of the said employers, which was only done with a view to defeat the claim of the employees for regularisation and that the contract system was clearly an unfair labour practice indulged by the respondents.

6.The petitioners' further case is that by G.O.Ms.No.49, dated 14.5.2002, the P&A Reforms Department directed that the work done by the Group D category, i.e. Sweepers, Cleaner, Gardeners and Scavengers shall be progressively outsourced and entrusted on contract basis, but in the said G.O., it has been specifically stated that on outsourcing, a condition may be imposed in the tender to ensure that the existing NMR/consolidated wage/daily wage/employees are to be given preference in employment by the contractor to protect their interest. Again by G.O.Ms.No.22, dated 28.2.2006, the same department directed all the departments to regularise the services of the daily wage employees, working in all Government departments, who have rendered 10 years of service as on 1.1.2006. Therefore, merely extending such benefit to the daily wages employees and leaving of alleged contract employees, the members of the petitioner Association, who are the very same employees employed directly by the respective respondents is highly arbitrary and discriminatory and violative of Article 14 of the Constitution of India. The very same employees, who are now under the alleged contract, which contract was taken by the respective department heads, in some cases, have already put in 10 years as NMRs or have put in 3 to 6 years under the alleged contract system and hence, the switch over to the contract system by the respondents is changing the service condition without notice and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

is done only to deny the employees herein the benefits of the above G.O. and it is an unfair labour practice. Under these circumstances, a direction has got to be issued first to engage the members of the petitioner association in the NMR Roll and further to regularise the service of the said employees, who fulfil the qualification as per the norms with all service benefits rendered earlier including the service rendered under the so-called contract and grant consequential relief thereon.

7.The learned counsel for the petitioners reiterated the grounds what are mentioned in the petition.

8.The court heard the learned counsel for the respondents. The learned counsel for the respondents in short would contend that the members of the petitioner Association as on today, are not in NMR Roll and apart from that, they have been working through the contractor and under these circumstances, they cannot be equated with the daily wage earner, to whom the G.O., dated 28.2.2006 could be applied and hence, the writ petition has got to be dismissed.

9.The court has paid its anxious consideration on the submissions made. It is not in controversy that the members of the petitioner Association have been working as daily wage earners for a long time, but the intervening circumstance was that they have been paid through contractor. It is pertinent to point out that though the members of the petitioner Association were paid through contractor, they have been engaged for the same work what is being done by the daily wage earner. It is also pertinent to point out that the alleged contract was taken by the respective department Heads. Apart from that, they have put in 10 years of service as NMRs. The contention of the respondents that their services are under the contract system, cannot be countenanced in law. Now, the department cannot be allowed to state that these petitioners' names are not found in the NMRs and they have been working under the contract, which was taken by the respective department heads.

10.Now, it would be quite clear that though the petitioners' names were not found in the NMR, the fact remains is that they have been working for more than 10 years. The court is of the considered opinion that no discrimination could be allowed between the petitioners Association, who are actually working under the contract, which is taken by the respective department heads and the persons, to whom daily wages are being given, while the service what is now rendered by the members of the petitioner Association, who are the petitioners herein, and also the daily wage earners are exactly same. Merely because they are under the contract, their request cannot be denied.

11.Adding circumstance is that the contract, which is now pleaded by the State, is taken by the respective department heads. The court is unable to understand why discrimination is shown in applying G.O.Ms.No.22, dated 28.2.2006. Once it is brought to the notice of the court that the members of the petitioner Association have been working for more than 10 years and they have been rendering the same service, though under the contract, like the daily wage earner, merely because of the reason that they are not under the NMR, they cannot be denied regularisation. If it is allowed, that would amount to discrimination, which in the opinion of the court is violative of Article 14 of the Constitution.

https://hcservices.ecourts.gov.in/hcservices/

12.Though number of representations were given, all have been rejected without any consideration of real situation. Hence, it is a fit case where a direction has got to be given to the respondents to first engage the members of the petitioners Association in the list of NMR Roll and also to regularise their service as applicable to the other daily wage earners as found in G.O.Ms.No.22, dated 28.02.2006, within a period of twelve weeks herefrom. Accordingly, a direction is issued and the writ petition is ordered. No costs.

vvk

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
State of Tamil Nadu,
Department of Public Works,
Fort St. George,
Chennai-600 009.

2.The Engineer in Chief,
and Chief Engineer (General),
Chepauk,
Chennai-600 005.

3.The Chief Engineer (Buildings),
Public works Department,
Chepauk,
Chennai-600 005.

4.The Superintending Engineer
(Building Maintenance Circle),
Public Works Department,
Chepauk,
Chennai-600 005.

5.The Executive Engineer,
North Presidency Division,
Chepauk, Chennai-600 005.

6.The Assistant Executive Engineer,
Secretariat Sub-Division,
Public works Department,
Secretariat,
Chennai-600 009.

+ One cc to Mr. s. S. Vasudevan, Advocate SR 74055
+ One cc to Govt Pelader SR 73989

LA (co)

sg 03/01/08

W.P.NO.22104 OF 2006
12.12.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/